

## **Addendum B**

### Addendum B: IBM's Objections to SCO's Alleged Evidence

| Subject Matter of Evidence   | Illustrative Exhibit(s)  | Objection(s)   |
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| The Bill of Sale, contemporaneous and subsequent licensing documents, and SCO's and Novell's post-APA conduct allegedly substantiating that Novell transferred ownership of the UNIX copyrights. (SCO AIX Br. ¶¶ 47, 54, 56-58, 61-63.)        | SCO Ex. 30; SCO Ex. 48; SCO Ex. 124; SCO Ex. 127; SCO Ex. 333; SCO Ex. 336; SCO Ex. 338; SCO Ex. 355; SCO Ex. 370.   | Irrelevant.  |
| Opinions of persons not involved in the negotiation of the Agreements or Amendments as to their meaning, or as to the materiality of provisions, or opinions not expressed to the parties to the Agreements. (SCO AIX Br. ¶¶ 2-4, 6-7, 18-22.) | SCO Ex. 17; SCO Ex. 38; SCO Ex. 50; SCO Ex. 277; SCO Ex. 278; SCO Ex. 330; SCO Ex. 331, SCO Ex. 351; SCO Ex. 375; SCO Ex. 585; IBM Ex. 585; R. Nimmer & J. Dodd, Modern Licensing Law § 9:16 (2005). | Violates the parol evidence rule; Hearsay; No foundation or personal knowledge; Irrelevant; Exceeds Final Disclosures. |
| Extrinsic evidence to contradict the plain meaning of the APA. (SCO AIX Br. ¶¶ 64-70.)   | SCO Ex. 38; SCO Ex. 39; SCO Ex. 40; SCO Ex. 76.  | Violates the parol evidence rule; Irrelevant.  |
|  | SCO Ex. 6; SCO Ex. 17; SCO Ex. 18; SCO Ex. 50; SCO Ex. 333; SCO Ex. 355; SCO Ex. 360.  | Violates the parol evidence rule; No foundation or personal knowledge; Irrelevant.                                     |
| Alleged evidence that AIX and Dynix are derivative works of the UNIX SOFTWARE PRODUCT. (SCO AIX Br. ¶¶ 5, 71-72, 75.)  | SCO Ex. 11; SCO Ex. 139; SCO Ex. 140; SCO Ex. 274; SCO Ex. 276; SCO Ex. 288.   | Untimely expert opinion; Exceeds Final Disclosures; Irrelevant; Not consistent with Fed. R. Evid. 702.                 |

| Subject Matter of Evidence  | Illustrative Exhibit(s)  | Objection(s)   |
|---|--|--|
| Alleged evidence that JFS came from AIX. (SCO AIX Br. ¶ 10.)  | SCO Ex. 277.   | Not identified in Final Disclosures; Stricken by order of Magistrate Wells; Untimely; Not consistent with Fed. R. Evid. 702; Lacks Foundation. |
| Evidence in SCO's proposed experts' reports containing allegations of misuse of material not identified in SCO's Final Disclosures. (SCO AIX Br. ¶¶ 5, 8-10.) | SCO Ex. 277; SCO Ex. 278.  | Exceeds Final Disclosures.   |
| Alleged evidence that SCO obtained the Assets identified in the APA. (SCO AIX Br. ¶¶ 59-61.)  | SCO Ex. 258; SCO Ex. 259; SCO Ex. 260; SCO Ex. 261; SCO Ex. 262; SCO Ex. 263; SCO Ex. 264; SCO Ex. 265; SCO Ex. 266; SCO Ex. 267; SCO Ex. 268; SCO Ex. 333; SCO Ex. 355. | Violates the parol evidence rule; Hearsay; Irrelevant.   |
| Evidence concerning the meaning of unambiguous terms in Amendment No. X. (SCO AIX Br. ¶¶ 18-22.)  | SCO Ex. 17; SCO Ex. 38; SCO Ex. 48; SCO Ex. 50; SCO Ex. 330; SCO Ex. 331; SCO Ex. 351; IBM Ex. 585; R. Nimmer & J. Dodd, Modern Licensing Law § 9:16 (2005).             | Violates the parol evidence rule; Irrelevant.  |